CR.A.No. 414/2001

XII-185(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No. ST.No. 193/99. Name- रामदेव

Father's Name- जानपत साप कुंवर

Residence मु० नवेट पो० करनला जि० डोरवा age- 33 वर्ष

Sentenced to- आजीवन कारावास on- 17-01-2001

under Section- धारा 302 भा.दं.वि. by अधिवेशन न्यायाधीश डोरवा (ई.ग.)

जुर्माना 1000/- रु. 1-वर्ष

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the prisoner states that he does not wish to be representated by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement संलग्न निर्णय प्रति निर्णय
2. Date on which copy received- 10-4-2001
3. Date on which Appeal sent- 17/4/2001
4. Whether the prisoner wishes to be represented or not-

No- ST.No. 193/99 -Name- रामदेव पि० जानपत साप कुंवर

confined in - केन्द्रीय -Jail- बिलासपुर ई.ग.

No- 208 Dated- 17/4/2001

Forwarded to the श्री मान रजि० सेशन० साग० डिवीजन बिला० इलीलाग)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent

...Jail.....

Date of receipt in- -Office-

Date of receipt of record to accompany the-

Memo of Appeal to the Appellate Court-

No- Date.....

Forwarded to the:

Date of receipt in Appellate court-

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 414/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 414/2001

Appellant : Ramdeo

Versus

Respondent : State of Chhattisgarh

None appears for the appellant.

Mr. U.N.S. Deo, Addl. Public Prosecutor, for the State.

ORAL JUDGMENT

(16-11-2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 17-1-2001 passed in Sessions Trial No. 193/1999 whereby the learned Additional Sessions Judge, Korba, after holding the accused-appellant guilty for commission of offence under Section 302 of I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo R.I. for one year.

2. The case of the prosecution in brief is that P.W. 3 Vijay Kumar Sharma gave merg intimation Ex. P-7 in Police Station, Kartala to the effect that in the evening of 19-3-1999, Ramdev Kanwar was abusing his maternal aunt saying that you people have kept Gunda Konda Majhi who had beaten his children on 18-3-1999, therefore,

P.T.O.

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मामला क्रमांक Cr. R. No. 414/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

you come out from the house, I will kill you. Ramdev Kanwar's wife was also with Ramdev Kanwar at that time. His maternal aunt closed the door and bolted it from inside. Thereafter Ramdev Kanwar and his wife left for their residence. In the night, Konda Majhi was sleeping in open verandah of the house of his maternal aunt. At about 6.00 a.m. in the morning, his maternal aunt opened the door and went to verandah where Konda Majhi was sleeping, in order to wake him up. She saw that Konda Majhi was lying dead and there were injuries on his neck inflicted by axe, blood was present, on which, his maternal aunt informed the Village Kotwar and other persons. Receiving this merg intimation, the Station House Officer of police station registered First Information Report Ex. P-8, left for the scene of occurrence and after giving notice Ex. P-10 to the Panchas, prepared inquest report of the body of Konda Majhi. He took into possession plain soil and blood stand soil from the place of occurrence under Ex. P-2. While in the Police custody, the accused gave memorandum Ex. P-4 regarding the axe-the weapon of offence and lungi, in pursuance of that, the axe and lungi were taken into possession under Ex. P-3. The axe-weapon of offence was sent for examination to the doctor under Ex. P-12, doctor after examination gave report Ex. P-6 that the injury present over the body of deceased could be caused by the said axe. The body of the deceased was sent for post mortem examination to Primary Health Centre, Kartala where Dr. B.S. Narbariya (P.W. 2) conducted post mortem and prepared post mortem report Ex. P-5. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

seized articles were sent for chemical examination to Forensic Science Laboratory from where report Ex. P-13 was received and Serologist report was received under Ex. P-14. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Korba, who in turn committed the case to the Sessions Judge, Bilaspur wherefrom the learned Additional Sessions Judge, Korba received the case on transfer.

3. The prosecution in order to establish the charge against the accused examined 14 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and further stated that he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the counsel for the respective parties and perusal of the record, convicted and sentenced the accused as aforementioned.

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4. When the matter was taken up, counsel for the accused-appellant was not present, therefore, the record was perused. Shri U.N.S. Deo, Additional Public Prosecutor on behalf of the State was heard. Having perused the record and hearing Shri Deo, we are of the considered opinion that the prosecution has failed to establish the charge framed against the accused for the following reason:-

5. P.W. 12 Vimlabai in her evidence has stated that on the previous evening, accused Ramdeo Kanwar came, started abusing, he was crying that Konda Majhi be

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sent out of the house. He will kill him and the whole family. He was holding axe and bow and arrow in his hand. Hearing this, she closed the door, thereafter Ramdev even pushed the door. In the night, Ramdev again came and he assaulted Konda Majhi with an axe in verandah where he was sleeping, on which Konda Majhi raised cries, hearing the cries, she peeped through the door, after half opening of the door, she saw that Ramdev was attacking Konda Majhi with an axe. Konda Majhi was lying in a pool of blood. Ramdev was crying that he will burn their house. He will finish all family members. He also threatened her that he will thrust lathi in her mouth. She saw the accused attacking Ramdeo with the axe, as a result of that, Konda Majhi died. The above evidence of Vimlabai claiming her to be eye-witness cannot be believed for the reason that merg intimation was given by P.W. 3 Vijay Sharma, in the said merg intimation, he has not mentioned that Vimlabai informed him that she witnessed the accused assaulting Konda Majhi with axe and that accused threatened her also. P.W. 3 Vijay Sharma in para 3 of his evidence has stated that in next day morning, Vimlabai came to him and disclosed that Konda Majhi has been murdered. Thereafter Kotwar was informed and Panchas of village were informed. This witness has not stated in his evidence that Vimlabai informed him that she saw the accused assaulting deceased Konda Majhi with axe. Perusal of the merg intimation reveals that this witness gave merg intimation to the effect that his maternal aunt informed him that in the night Konda Majhi was sleeping in the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

verandah and when in the morning at about 6.00 a.m. she opend the door, she saw that Konda Majhi was lying dead in the verandah, therefore, this omission is material and Vimlabai has certainly made improvement in her evidence thereafter. For the above reason, her evidence to the effect that she witnessed the accused assaulting Konda Majhi cannot be believed.

6. There is no other witness witnessing the accused assaulting deceased Konda Majhi. Only circumstantial evidence remains to the effect that in the previous evening of the commission of the offence, accused Ramdev came in front of the house of Vimlabai carrying axe in his hand. He started abusing Vimlabai saying that they have kept Konda Majhi in their house who is a Gunda. He has beaten his children, therefore, he will not leave Konda Majhi and other family members. To this effect, P.W. 3 Vijay Sharma, P.W. 6 Pradeep Kumar, who are relatives of Vimlabai and P.W. 8 Ku. Mamta Tiwari, daughter of Vimlabai have also stated, but merely on this ground, accused cannot be connected with the crime in question. Abusing Vimlabai saying that as Konda Majhi has beaten children of Ramdeo, he will kill them, is certainly a motive for the commission of crime but only on the basis of motive without corroboration by other circumstantial or ocular evidence connecting the accused with the crime in question cannot be made a ground for holding the accused guilty for commission of murder of Konda Majhi. The other circumstantial

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence adduced by the prosecution is that the weapon of offence, the axe and lungi of the accused were taken into possession. The axe in question was taken into possession at the instance of the accused based on Ex. P-3. Unfortunately, as per the F.S.L. report, no blood was found on the axe, however, the blood was found in lungi of the accused. As per the Serologist report, blood was disintegrated, therefore, no opinion was given about the origin of the blood whether it was a human blood or not, therefore, based on the recovery of the lungi and axe, the accused cannot be connected with the crime in question.

7. For the foregoing reasons, we are of the considered opinion that the prosecution has utterly failed to connect the accused with the crime in question i.e. committing murder of Konda Majhi, as such, the finding of the trial Court convicting and sentencing the accused for commission of murder of Konda Majhi cannot be sustained as the same is not based on legal clinching evidence. In the result, appeal succeeds and conviction and sentence imposed upon the accused-appellant under Section 302 of I.P.C. are set aside. He is acquitted of the charges. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.